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No. 82-5576

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JEFFREY LEE PICKETT, by next friend,
FRANCES ANNETTE PICKETT, and
FRANCES ANNETTE PICKETT,
Appellants,

v.

BRAXTON BROWN,
Appellee,

and

WILLIAM M. LEECH, JR.,
Intervenor-Appellee.

Appeal From The Supreme Court of Tennessee

APPELLEE'S BRIEF ON THE MERITS

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JANUARY THROUGH DECEMBER — 1977 THROUGH 1981
CHILD SUPPORT COLLECTIONS

NON-SUPPORT	*1977*	*1978*	*1979*	*1980*	*1981*
JANUARY	$ 146,365.89	$ 213,296.18	$ 265,228.65	$ 312,516.64	$ 329,920.31
FEBRUARY	149,399.83	208,512.80	286,233.56	288,688.26	309,278.44
MARCH	210,725.41	273,536.43	286,038.78	302,953.93	338,318.23
APRIL	212,850.48	253,203.33	265,372.70	309,801.70	354,763.72
MAY	212,264.00	261,265.14	268,730.87	304,412.00	303,223.13
JUNE	234,492.50	258,707.92	285,860.51	298,049.99	349,327.12
JULY	205,418.10	221,568.23	281,935.99	316,783.30	325,154.14
AUGUST	227,118.11	273,539.27	308,345.29	284,519.91	326,015.56
SEPTEMBER	218,899.36	239,696.05	274,775.95	315,676.85	356,947.67
OCTOBER	242,297.50	275,741.11	318,505.18	346,024.10	333,597.61
NOVEMBER	247,064.84	252,703.79	286,357.92	276,975.65	351,675.27
DECEMBER	216,577.25	237,074.49	283,643.66	311,127.16	444,222.82
TOTAL	$2,523.473.27	$2,968,844.74	$3,411,029.06	$3,667,529.49	$4,122,444.02

COURT CLERK'S OFFICE
JANUARY THROUGH DECEMBER — 1977 THROUGH 1981
CHILD SUPPORT COLLECTIONS

PATERNITY	*1977*	*1978*	*1979*	*1980*	*1981*
JANUARY	$ 104,214.01	$ 174,292.01	$ 256,584.28	$ 306,558.86	$ 374,244.48
FEBRUARY	110,756.71	174,027.79	256,511.09	284,516.08	359,559.01
MARCH	146,495.11	230,629.38	273,465.41	314,692.72	385,553.81
APRIL	133,293.93	226,390.76	246,904.69	316,613.76	397,003.00
MAY	132,726.28	229,181.56	267,750.73	334,000.32	324,098.52
JUNE	151,231.03	246,365.34	277,014.01	312,044.45	386,798.70
JULY	139,344.89	225,394.38	274,034.15	324,660.37	351,691.61
AUGUST	162,342.18	235,344.78	290,936.40	297,330.48	360,369.41
SEPTEMBER	152,081.97	227,911.43	266,963.71	333,990.05	397,616.46
OCTOBER	185,493.88	267,748.06	327,108.65	368,792.51	377,711.32
NOVEMBER	200,724.57	239,713.23	280,073.45	315,255.79	376,819.08
DECEMBER	167,499.93	218,583.88	269,478.98	337,840.17	498,306.20
TOTAL	$1,786,204.49	$2,694,582.60	$3,286,825.55	$3,846,295.56	$4,589,771.60

COURT CLERK'S OFFICE
JANUARY THROUGH DECEMBER — 1977 THROUGH 1981
CHILD SUPPORT COLLECTIONS

DEPENDENCY	*1977*	*1978*	*1979*	*1980*	*1981*
JANUARY	$ 8,596.12	$ 7,984.59	$ 6,655.00	$ 7,324.45	$ 7,629.30
FEBRUARY	8,745.00	8,288.67	6,397.40	6,475.45	7,378.50
MARCH	10,507.50	10,599.00	6,431.50	7,776.83	7,112.84
APRIL	9,417.12	7,565.00	6,512.91	7,152.26	7,859.66
MAY	8,834.50	7,674.50	6,763.50	7,521.00	7,701.00
JUNE	7,868.50	7,012.50	7,194.50	7,019.97	7,080.00
JULY	8,232.04	5,199.17	6,330.50	9,173.06	7,345.00
AUGUST	9,162.79	6,993.50	7,046.67	7,328.91	7,979.50
SEPTEMBER	8,159.69	6,179.00	6,871.50	6,625.00	8,209.46
OCTOBER	9,514.50	6,266.66	7,634.00	7,425.75	7,643.08
NOVEMBER	8,571.62	6,207.51	7,855.50	6,813.50	9,683.35
DECEMBER	8,934.50	8,335.11	7,990.31	6,997.83	11,799.80
TOTAL	$106,543.88	$88,405.21	$83,683.29	$87,634.01	$97,421.49

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v.

BRAXTON BROWN,
Appellee,

and

WILLIAM M. LEECH, JR.,
Intervenor-Appellee.

Appeal From The Supreme Court of Tennessee

APPELLEE'S BRIEF ON THE MERITS

STATUTES INVOLVED

Tennessee Code Annotated, section 28-1-106:

> PERSONS UNDER DISABILITY ON ACCRUAL OF RIGHT. — If the person entitled to commence an action is, at the time the cause of action accrued, either within the age of eighteen (18) years, or of unsound mind, such person, or his representatives and privies, as the case may be, may commence the action, after the removal of such disability, within the time of limitation for the particular cause of action, unless it exceed three (3) years, and in that case within three (3) years from the removal of such disability.

Tennessee Code Annotated, section 34-101:

FATHERS AND MOTHERS JOINT AND EQUAL NATURAL GUARDIANS OF MINOR CHILDREN — EQUALLY CHARGED WITH SUPPORT AND OTHER DUTIES. — Fathers and mothers are joint natural guardians of their minor children, and they are equally and jointly charged with their care, nurture, welfare, education, and support, and also with the care, management and expenditure of their estates. Fathers and mothers have equal powers, rights, and duties with respect to the custody of their minor child or children, and the control and the services and earnings of such minor child or children; provided, that so much as may be necessary of the net income of such minor child may be expended in his care, maintenance and education.

Tennessee Code Annotated, section 36-223:

LIABILITY OF FATHER OF CHILD BORN OUT OF WEDLOCK. — The father of a child born out of wedlock is liable for the necessary support and education of the child. He is also liabile for the child's funeral expenses. He is liable to pay for the expenses of the mother's confinement and recovery, and is also liable to pay such expenses, including counsel fees, in connection with her pregnancy as the court in its discretion may deem proper.

Tennessee Code Annotated, section 36-224:

PETITION TO ESTABLISH PATERNITY — TIME OF FILING — JURISDICTION — ISSUANCE OF WARRANT. — (1) A petition to establish paternity of a child, to change the name of the child if it is desired, and to compel the father to furnish support and education for the child in accordance with this chapter may be filed by the mother, or her personal representative, or, if the child is likely to become a public charge by the state department of

human services or by any person. Said petition may be filed in the county where the mother or child resides or is found or in the county where the putative father resides or is found. The fact that the child was born outside this state shall not be a bar to filing a petition against the putative father. After the death of the mother or in case of her disability said petition may be filed by the child acting through a guardian or next friend.

(2) Proceedings to establish the paternity of the child and to compel the father to furnish support and education for the child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than two (2) years from the birth of the child, unless paternity has been acknowledged by the father in writing or by the furnishing of support. Provided, however, that the department of human services or any person shall be empowered to bring a suit in behalf of any child under the age of eighteen (18) who is, or is liable to become a public charge.

(3) For the purpose of this chapter original and exclusive jurisdiction is conferred upon the juvenile court.

(4) The petition shall be verified by affidavit and shall charge the person named as defendant with being the father of the child and shall demand that he be brought before the court to answer the charge.

(5) The court shall issue a warrant for the apprehension of the defendant, directed to any officer in the state authorized to execute warrants, commanding him without delay to apprehend the alleged father and bring him before the court, for the purpose of having an adjudication as to the paternity of the child, and such warrant may be issued to any county of this state. But in the discretion of the court, a summons may be issued as in civil cases.

STATEMENT OF CASE

Statement of Case as presented in Appellant's Brief is adopted by Appellee.

SUMMARY OF ARGUMENT

A. Tennessee's paternity statute which requires that actions to establish paternity and the obligation of support be instituted within two years of the birth of the child, unless paternity has been acknowledged by the father in writing or by the furnishing of support, does not invidiously discriminate against an illegitimate child's right to establish support. The two-year limitation on certain actions to establish paternity and support on behalf of illegitimate children represents a legitimate exercise of legislative authority which is rationally and substantially related to the State's legitimate interests in avoiding the prosecution of stale and fraudulent paternity actions. Further, the two-year limitation upon certain paternity actions is sufficiently long in duration to afford persons wishing to assert legitimate claims a reasonable opportunity to assert said claims. Tennessee's paternity statute also furthers the State's legitimate interests in protecting society from the burden of supporting children by allowing actions to be instituted at any time, by the Department of Human Services or any person, on behalf of any child under the age of eighteen who is or is liable to become a public charge.

Under Tennessee law legitimate and illegitimate children are afforded the same right to paternal support. T.C.A. § 34-101 and T.C.A. § 36-223. To establish the duty of support, where there is no prior acknowledgement of paternity, paternity must be established within two years after the birth of the minor child. T.C.A. § 36-224(2).

Two years following the birth of a child born out of wedlock is sufficiently long in duration to allow a mother or one acting in her place to logically and realistically assess her circumstances and presents a reasonable opportunity for those with an interest

in such children to assert claims on their behalf. The Tennessee legislature could rationally determine that within two years the mother could sufficiently recover from the financial difficulties and emotional strain and confusion which often attend the birth of an illegitimate child. If the mother suffers from a disability by virtue of her minority, the statute of limitations is tolled until the disability is removed. T.C.A. § 28-1-106. Further, a minor child has the right to maintain the action through a guardian or next friend in the event of the mother's death or disability. *See* T.C.A. § 36-224(1). Appellant's argument cites no authority to the contrary.

Further, Tennessee's paternity statute is "carefully tuned" to avoid hardship in predictable groups of cases. T.C.A. § 36-224(2) exempts those actions where paternity has been acknowledged by the father in writing or by the furnishing of support from the two-year limitation period. These exceptions are designed to avoid problems associated with the "practical obstacles" to filing paternity actions within the statutory limitation period.

Thus, appellee submits there are several factors which distinguish Texas' and Tennessee's paternity statutes. Under Texas law only fathers against whom paternity has been established have the same duty of support owed to legitimate children. By statute in Tennessee fathers of children born out of wedlock have a duty to provide support. T.C.A. § 36-223. If a putative father has acknowledged paternity in writing or provided support or if the child is subject to become a public charge, Tennesee law allows actions for support to be brought at any time until the minor child is eighteen. T.C.A. § 36-224. Thus, under Tennessee law the right to paternal support afforded children born out of wedlock is not "illusory". Tennessee law provides persons with legitimate claims a reasonable opportunity to establish the support obligation. Tennessee's two-year statute of limitations as compared to the Texas one-year statute of limitation is sufficiently long to avoid obvious personal family and

financial circumstances which often surround the birth of a child. *See Mills,* 102 S.Ct. at 1555. Tennessee's two-year limitation upon actions to establish paternity does not restrict the right to establish the obligation of support as effectively to extinguish it.

It is appellant's duty to prove that the two-year statute of limitations does not rest upon a reasonable basis and is essentially arbitrary. Absent such a showing, the presumption of constitutionality requires that the validity of the statute be upheld. *Parham* v. *Hughes,* 99 S.Ct. 1742, 1746, 441 U.S. 351, 60 L.Ed.2d 269 (1979).

The two-year statute of limitation applicable to appellant's claim is substantially related to the State's interests in avoiding litigation of stale or fraudulent claims. The two-year limitation represents a balance between the right of a mother and child to assert a claim of paternity, the right of a putative father to have the action litigated while proof is relatively fresh and evidence is still available and the interests of the state in the prompt adjudication of paternity claims. Because a father's obligation of support is ubiquitous it is in the best interests of all parties to have claims of paternity and support litigated promptly.

Tennessee's statutory scheme which views actions of paternity as civil in nature compel a two-year statute of limitation. A mother bringing an action to establish paternity will prevail if she can prove her claim by a preponderance of the evidence. *Frazier* v. *McFerren,* 55 Tenn. App. 431, 402 S.W.2d 467 (1964). The state's interests in preserving the integrity of the judicial process requires a statute of limitations which demands that paternity actions be prosecuted while proof is relatively fresh and available.

The availability of HLA test results does not negate the threat of inaccurate determinations in paternity actions. Defendants who are not excluded by blood test results are required to rely upon more conventional forms of proof which are greatly

diminished with the passage of time. *Mills* v. *Hableutzel,* 456 U.S. ____, 102 S.Ct. 1549, 1554, 71 L.Ed.2d 770 (1982) n. 4. Further, a defendant may not be able to afford the expense of HLA tests.

The problems of proof in paternity actions have been consistently recognized by this Court. *Parham* v. *Hughes, supra; Lalli* v. *Lalli,* 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503 (1978); *Trimble* v. *Gordon,* 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed.2d 31 (1977); *Gomez* v. *Perez,* 409 U.S. 535, 93 S.Ct. 872, 35 L.Ed.2d 56 (1973); *Mills* v. *Hableutzel, supra.* The high risk of inaccurate findings in paternity proceedings compel the imposition of a two-year limitation upon those actions in which there is a greater likelihood of problems of proof. *See Cessna* v. *Montgomery,* 63 Ill.2d 71, 344 N.E.2d 417, 453 (1976).

The statutory classification between illegitimates who are supported from private sources and those who rely upon public funds for assistance is reasonable legislation which is based upon the State's interests in protecting public funds. The provision of T.C.A. § 36-224(2) which authorizes the Department of Human Services or any person to bring an action, at any time, on behalf of a child under the age of eighteen, who is or is liable to become a public charge, furthers the State's legitimate interests in protecting public revenues by seeking to avoid the burden of supporting minor children. *See Tennessee Department of Human Services* v. *Lumley,* 638 S.W.2d 381 (1982). Further, allowing a longer period within which an action on behalf of children who are supported by public funds to establish the obligation of support merely recognizes that such claims cannot be said to commence at any given age during the child's minority.

By allowing actions to establish paternity on behalf of children who rely upon public assistance to be brought at any time until the child reaches eighteen years of age, the State seeks to establish the duty of support during the period within which

the obligation exists. Thus, this classification clearly furthers legitimate state interests by seeking to place the responsibility of support of minor children on at least one person who is responsible for the obligation.

B. Tennessee's paternity statute does not violate principles of due process. The two-year statute of limitation is reasonable legislation which affords persons with legitimate claims a reasonable opportunity to assert them. The legislature could reasonably conclude that on balance the mother and society's interests in asserting claims of support are not great enough to outweigh the high risk of inaccurate findings in paternity proceedings. *Pickett* v. *Brown,* JA, p. 37.

T.C.A. § 36-224, which authorizes the mother or one acting in her place to assert claims of paternity and support, is rational legislation which is consistent with this nation's strong tradition of parental control in matters which are of a private nature. *See Parham* v. *J.R.,* 422 U.S. 584, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1978); *Wisconsin* v. *Yoder,* 92 S.Ct. 1526, 406 U.S. 205, 32 L.ED.2d 15 (1972). The legislative determination which places this right of action in a mother rather than the child does not constitute a violation of due process. Pursuant to T.C.A. § 36-224(1) a minor child has the right to bring an action to establish paternity and the obligation of support only in the event of the death or disability of the mother. This action may be brought by the child through a guardian or next friend.

Assertions of procedural due process violations are inapplicable to appellant's claim. Legislative determinations limiting actions are constitutionally valid if based upon rationality.

Thus, appellee respectfully submits that Tennessee's paternity statute is not violative of principles of equal protection or due process. The two-year statute of limitations upon paternity actions is sufficiently long in duration to afford a reasonable opportunity for those with an interest to assert claims of paternity. The time limitation is substantially related to the State's in-

terests in avoiding the litigation of stale or fraudulent claims. Further, Tennessee's paternity statute represents a reasonable exercise of legislative authority which has a reasonable basis.

Appellant has failed in showing that Tennessee's paternity statute is violative of the Equal Protection and Due Process Clause of the Fourteenth Amendment. The presumption of constitutionality which is afforded this legislation requires this Court to uphold the validity of this statute.

Accordingly, the decision of the Tennessee Supreme Court should be affirmed and appellant's appeal dismissed.

ARGUMENT

1. Tennessee's Two-Year Statute Of Limitations Is Substantially Related To The State's Interests In Protecting The Fair And Efficient Operation Of The Judicial Process By Avoiding The Prosecution Of Stale Or Fraudulent Claims And Affords A Reasonable Time Within Which Claims Of Paternity May Be Asserted.

Under Tennessee law legitimate and illegitimate children are afforded an equal right to paternal support. T.C.A. § 34-101 provides with regard to obligations of parents:

> Fathers and mothers are joint natural guardians of their minor children, and they are equally and jointly charged with their care, nuture, welfare, education, and support, and also with the care, management and expenditures of their estates. . . .

T.C.A. § 36-223 provides with regard to the responsibility of fathers of children born out of wedlock:

> The father of a child born out of wedlock is liable for the necessary support and education of the child. . . .

Actions on behalf of illegitimate children to establish paternity and the obligation of support are brought pursuant to T.C.A. § 36-224. T.C.A. § 36-224 provides in pertinent part:

> (1) A petition to establish paternity of a child, to change the name of a child if it is desired, and to compel the father to furnish support and education for the child . . . may be filed by the mother, or her personal representative, or, if the child is likely to become a public charge by the State Department of Human Services or by any person. . . . After the death of the mother or in case of her disability said petition may be filed by the child acting through a guardian or next friend.

> (2) Proceedings to establish the paternity of the child and to compel the father to furnish support and education for the child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than two (2) years after the birth of the child, unless paternity has been acknowledged by the father in writing or by the furnishing of support. Provided, however, that the Department of Human Services of any person shall be empowered to bring a suit in behalf of any child under the age of eighteen (18) who is, or is liable to become a public charge. . . .

Appellant has challenged the constitutionality of the Tennessee two-year statute of limitations in paternity actions as being violative of due process and equal protection. Tennessee responds that the paternity statute and the applicable statute of limitations represent a reasonable exercise of legislative power which is substantially related to the State's legitimate interests in avoiding prosecution of stale and fraudulent claims.

Paternity actions are fraught with particularly troublesome problems of proof. *See Gomez* v. *Perez,* 409 U.S. 535, 93 S.Ct. 872, 35 L.Ed.2d 56 (1973); *Trimble* v. *Gordon,* 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed.2d 31 (1977); *Lalli* v. *Lalli,* 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503 (1978); *Parham* v. *Hughes,* 99 S.Ct. 1742, 441 U.S. 351, 60 L.Ed.2d 269 (1979); *Mills* v. *Hableutzel,* 456 U.S. ____, 102 S.Ct. 1549, 71 L.Ed.2d 770 (1982); *Thompson* v. *Thompson,* 404 A.2d 269 (1979); *Cessna* v. *Montgomery,* 63 Ill.2d 71, 344 N.E.2d 497 (1976). In support suits by illegitimate children the State has an interest in perpetuating the fair and efficient operation of the judicial process. *See Mills, supra; Jimenez* v. *Weinberger,* 417 U.S. 628, 94 S.Ct. 2496, 481 L.Ed.2d 363 (1974). Statutes of limitations in paternity actions further the state's interest in the fair and efficient operation of the judicial process by avoiding the prosecution of stale and fraudulent claims. In *Gomez,* this Court recognized the lurking

problems of proof with regard to paternity actions. As this Court has stated these problems cannot be "lightly brushed aside". *Gomez* v. *Perez,* 409 U.S. 535, 538 (1973).

T.C.A. § 36-224(2) does not pose the "impenetrable barrier" which was held violative of the Fourteenth Amendment in *Gomez.* Nor does it so restrict the right of an illegitimate child to support as to effectively extinguish the right as did the Texas statute which was reviewed by this Court in *Mills.* The Tennessee statute affords persons bringing an action on behalf of an illegitimate child a reasonable opportunity to establish paternity and the obligation of support.

Tennessee's two-year statute of limitations represents a legislative effort to balance competing interests in paternity adjudications. By imposing a two-year statute of limitations in paternity actions the legislature has sought to balance the interests of the mother and child against the interests of the putative father and the public interest in prompt litigation of paternity claims.

Appellant asserts that because no statute of limitations exists for legitimate children seeking to enforce child support, the Tennessee two-year statute of limitations invidiously discriminates against illegitimate children. This Court has never held that legitimate and illegitimate children could not be treated differently. *Labine* v. *Vincent,* 401 U.S. 532, 91 S.Ct. 1017, 28 L.Ed.2d 288 (1971); *Mills* v. *Hableutzel,* 102 S.Ct. 1549, 1554. To the contrary, in *Mills* the Court has stated "in support suits by illegitimate children more than in support suits by legitimate children, the state has an interest in preventing the prosecution of stale or fraudulent claims and may impose greater restrictions on the former than it imposes on the latter". *Mills,* 102 S.Ct. 1549, 1554.

The issues before this Court in *Mills* are similar to those presented by this appeal. However, the statutory scheme in Ten-

nesee is different than the Texas scheme and the distinctions require that the constitutionality of Tennessee's two-year limitation be upheld.

The Tennessee statute establishing the father's duty to support children born out of wedlock was enacted in 1955. T.C.A. § 36-223. Prior to this Court's decision in *Gomez* in 1973, Texas recognized no enforceable duty requiring natural fathers to support illegitimate children. The Tennessee statute is not a judicially required legislative reaction. Tennessee has almost thirty years of statutory precedent establishing the duty of a father to support a minor child born out of Wedlock. Likewise, the Tennessee legislature in 1955 established procedures for paternity in support actions on behalf of illegitimate children. T.C.A. § 36-224.

Unlike the Texas system, establishment of paternity is not the necessary first step in all suits by illegitimate children for support. An action seeking to establish the obligation of support on behalf of a minor child, who does not fall within the exceptions of T.C.A. § 36-224(2), must be brought within two years following the birth of the child. Thus, in actions to establish the obligation of support which do not fall within the exceptions of § 36-224(2) the duty of support must first be established. The father's duty to support a child born out of wedlock may be imposed at any time pursuant to T.C.A. § 36-223, notwithstanding the lack of a prior adjudication of paternity. *Smith* v. *Pruett,* 506 F.Supp. 135 (1980); *Shelly* v. *Central Woodwork, Inc.,* 207 Tenn. 411, 340 S.W.2d 896 (1960); *Brown* v. *Thomas,* 426 S.W.2d 499 (1968); *Smelcer* v. *Broyles,* 225 Tenn. 187, 465 S.W.2d 355 (1971); *Reynolds* v. *Richardson,* 483 S.W.2d 747 (1971); *Gentry* v. *Davis,* 512 S.W.2d 4 (1974).

Under Tennessee law, if the mother of an illegitimate child is under the age of eighteen the action to establish paternity may be commenced by her after the removal of the disability of a minority. T.C.A. § 28-1-106 clearly makes age a disability and

tolls statutes of limitation.[1] Thus, where under Texas law the one-year limitation was not tolled during minority, under Tennessee law the mother's cause of action is preserved until a time when she is legally competent to bring the action and continues until she is twenty years old.

Appellant vigorously argues that under Tennessee law the statute of limitations in paternity actions is not tolled for a minor mother. Appellant cites no authority to support this assertion. Appellee submits that under Tennessee law, a minor mother is not emancipated by the birth of a child. Accordingly, T.C.A. § 28-1-106 operates to toll the statute of limitations for a minor mother in paternity proceedings.

In *Mills,* this Court found that the removal of an "impenetrable barrier", as required by *Gomez,* only to be replaced by an opportunity which is so truncated that few could utilize it effectively, did not satisfy due process. These considerations are inapplicable to the case at bar. As previously stated, the Tennessee legislature has afforded illegitimate children the right of support from their father since 1955. The two-year limitation was concommitantly imposed.

In *Mills* a one-year statute of limitation was said to be inadequate because it did not reasonably consider the financial and emotional strain, and confusion which could encumber a mother's filing of a paternity suit within twelve months of the

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[1] T.C.A. § 28-1-106 provides:

> **Persons under siability on accural of right.—If the person entitled to commence an action is, at the time the cause of action accrued, either within the age of eighteen (18) years, or of unsound mind, such person, or his representatives and privies, as the case may be, may commence the action, after the removal of such disability, within the time of limitation for the particular cause of action, unless it exceed three (3) years, and in that case within three (3) years from the removal of such disability.**

child's birth. *Mills,* 102 S.Ct. 1547, 1555. Under Tennessee law an unwed mother is afforded a minimum of two years within which paternity actions may be commenced. The two-year minimum applies to actions by mothers over the age of eighteen who do not rely upon public assistance. Further, the two-year statute of limitations does not apply to actions where the father has acknowledged the child in writing or by the furnishing of support. It is reasonable to assume that within two years following the birth of an illegitimate child the financial and emotional obstacles which confront this group of unwed mothers would have dissipated significantly, thus affording the mother a reasonable opportunity to assert a claim of paternity.

In many situations the two-year minimum does not apply. Tennessee mothers who are forced to rely upon public assistance to support their children can have paternity established at any time. *Tennessee Department of Human Services* v. *Lumley,* 638 S.W.2d 381 (1982). Furthermore, unwed minor mothers would have their cause of action preserved until age twenty. *See* T.C.A. § 28-1-106 fn. 1, *supra.* Also, Tennessee's paternity statute places no limitation upon actions to establish paternity and the obligation of support where the father has acknowledged the child in writing or by the furnishing of support. T.C.A. § 36-224(2). These exceptions demonstrate flexibility in Tennesee's statutory scheme and eliminate those repugnant examples so heavily relied upon by the appellant. *See* Appellant's Brief, p. 9, fn. 7; pp. 28, 29. Accordingly, unlike the Texas paternity statute, the Tennessee statute does not so restrict the right of mothers with legitimate claims as effectively to extinguish them.

In *Mills,* the Court analyzed the Texas one-year statute of limiations in paternity actions focusing on two requirements. The Court stated in actions which impose greater restriction upon the illegitimate's right to establish the obligations of support, the statute of limitations must be sufficiently long to present a reasonable opportunity for those with an interest to assert

claims, and the time limitation placed on the opportunity to assert the claim must be substantially related to the state's interests in avoiding the litigation of stale or fraudulent claims.

In *Mills* it was held that the one-year limitation within which the mother may seek support following the birth of her child is as a matter of law too short in duration. Considerations surrounding the birth of a child require that the opportunity to establish support for illegitimate children be longer than one year. *Mills,* 102 S.Ct. 1549, 1555. Obviously, as the Tennessee Supreme Court has stated, two years becomes the minimum period which could possibly be upheld. *Pickett* v. *Brown,* JA, p. 37. Recognizing those circumstances which led this Court in *Mills* to hold unconstitutional the one-year statute of limitations, the Tennessee Supreme Court upheld Tennessee's two-year limitation. The Tennessee Supreme Court found:

> The legislature could rationally determine that two years is long enough for most women to have recovered physically and emotionally, and to be able to assess their and their children's situations logically and realistically. *Pickett* v. *Brown,* JA, p. 37.

Appellee respectfully submits two years is a reasonable time for unwed mothers, over the age of eighteen, to assert just claims.

The requirements in Tennessee that actions to establish paternity and the obligation of support be instituted within a reasonable period following the birth of the child is supported by recognized authority. *See* Harry D. Krause, *Illegitimacy: Law and Social Policy,* Ch. 7, p. 235 (1971); Harry D. Krause, *Child Support in America,* p. 188 (1981). Other legislative bodies have also seen the wisdom of imposing shorter limitations in actions to establish paternity and the obligation of support.

In *Thompson* v. *Thompson,* 285 Md. 488, 404 A.2d 269 (1979), appeal dismissed, 444 U.S. 1062, 100 S.Ct. 1002, 62

L.Ed.2d 745 (1980) Maryland's two-year statute of limitation upon paternity actions was upheld. The statute is substantially similar to Tennesee's in that the two-year limitation does not apply where a putative father has acknowledged paternity in writing or has provided support.

In *State* v. *Witkowski,* 256 N.W.2d 216 (Iowa 1977) the constitutionality of the state's two-year statute of limitation applicable to actions to enforce the obligation of support was upheld. The Court found that the two-year statute of limitation did not amount to an insurmountable barrier and that the Iowa statute was "carefully tuned to alternative considerations". The two-year statute of limitation did not apply where paternity had been judicially established, or has been acknowledged by the father in writing, or by the furnishing of support.

In *Matter of Mores* v. *Feel,* 73 Misc.2d 942, 343 N.Y.S.2d 220 (Family Court of New York Co. 1973) the New York Court upheld the constitutionality of a dual statute of limitation requiring paternity actions to be brought within two years unless paternity is acknowledged in writing or by furnishing support and allowing action to be brought within ten years of birth of child if mother of child was or was likely to become a public charge.

In *Cessna* v. *Montgomery,* 63 Ill.2d 71, 344 N.E.2d 447 (1976) the court found that state's two-year statute of limitation did not unconstitutionally deny equal protection. A state study had found that with the two-year statute of limitation that paternity actions were beset with coercion, corruption, and perjury. Court further found that defendant's problems of proof were substantially increased with the passage of time.

The reasonableness of Tennessee's paternity statute is manifest not only by the two-year limitation, longer than the one-year period in *Mills,* but also by the fact that because of its flexibility the Tennessee statutory scheme does not impose an impenetrable barrier to those with legitimate claims.

As stated by the Court in *Pickett:*

> ". . . the Tennessee statute is 'carefully tuned' to avoid hardship in predictable groups of cases, since it contains an exception for actions against men who have acknowledged their children in writing or by supporting them." *Pickett* v. *Brown,* JA, p. 37.

These exceptions are designed to avoid problems associated with the "practical obstacles" to filing suits within the statutory limitation period. Under Tennessee law an action for support may be maintained on behalf of an illegitimate at any time if the father has furnished support or acknowledged paternity in writing. In these instances a prior adjudication of paternity is not a prerequisite to imposing the duty of support. *See Smelcer* v. *Broyles, supra; Shelly* v. *Central Woodwork, Inc., supra; Brown* v. *Thomas, supra; Reynolds* v. *Richardson, supra; Gentry* v. *Davis, supra.*

Appellant states in her brief that the two-year statute of limitations in paternity action, unlike the statute of limitations in every other form of action is not tolled during the child's minority. Appellant cites no authority for this proposition and appellee posits that this position is not correct. Under T.C.A. § 28-1-106[3] a minor may commence an action after the removal of the disability of minority. Absent authority to the contrary, this statute applies to minor mothers in paternity proceedings.

Further, in the event of the mother's disability, by virtue of minority, the child may bring an action to establish paternity and the obligation of support through a guardian or next friend. *See* T.C.A. § 36-224(1). Thus, under Tennessee law a minor unwed mother's right is clearly protected.

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[3] Statute set forth in footnote 1.

As a matter of law, the Tennessee legislature has rationally determined that the possibility an unwed mother over age eighteen may encounter difficulties within two years following the birth of a child is outweighed by the state's interests in prohibiting litigation of stale and fraudulent claims in paternity proceedings. *Pickett* v. *Brown*, JA, p. 37. The legislature could reasonably conclude that the potential harm to society and putative fathers, defending stale claims is, on balance, greater than the potential harm to illegitimate children whose support right is forfeited by a mother's inaction. *See Cessna* v. *Montgomery*, 344 N.E.2d 447, 453; *Pickett* v. *Brown*, JA, p. 37.

It is well established that statutes of limitation have a legitimate role in the American judicial process. Such statutes are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared. *Order of Railroad Telegraphers* v. *Railway Express Agency*, 321 U.S. 342, 349, 64 S.Ct. 582, 586, 88 L.Ed. 788 (1944). These statutes represent a public policy about the privilege to litigate. *Chase Securities Corporation* v. *Donaldson*, 325 U.S. 304, 314, 65 S.Ct. 1137, 89 L.Ed.2d 1628 (1945). Because of the nature of paternity adjudications generally and in Tennessee specifically, the two-year limitation is substantially related to the State's interest in avoiding the prosecution of stale and fraudulent claims.

In *Pickett* v. *Brown*, the Tennessee Supreme Court articulated several considerations which support the legislative decision imposing a two-year statute of limitation in paternity actions.

> "Its considerations could include the temporary nature of many relationships outside of wedlock; the possibility of formation of new relationships by the mother, putative father and anyone else with whom she might have had relations at the relevant time; the difficulty of producing proof

> to rebut the mother's testimony; the statistics showing the frequency of false and very subjective testimony in this type of case; . . .." JA, p. 37.

Further, the father of an illegitimate child may not be aware that a child has been conceived. To allow a mother to bring an action years after the liason would present obvious problems of proof especially where the putative father had no prior knowledge of the probable obligation which may be imposed.[3] *See Lalli* v. *Lalli, supra; Thompson* v. *Thompson, supra.* Also, undue delay in bringing claims of paternity could result in discord in existing marital relationships where a putative father is required to present proof of non-paternity by testimony of other men who may have had a relationship with the mother during the time of conception. Further, a putative father may find potential witnesses reluctant to testify after they have formed other relationships. These considerations compel the imposition of a statute of limitations which requires the prosecution of claims of paternity before memories have faded, evidence has been lost, witnesses have disappeared or their testimony has become difficult to elicit.

The two-year statute of limitations seeks to strike a balance between the rights of plaintiffs with just claims and the rights of defendants and society in prompt litigation of paternity actions. This principle is true of all statute of limitations and has been recognized as a valid exercise of legislative authority. *See Commission of Welfare of City of New York* v. *Jones,* 73 Misc.2d 1014, 343 N.W.2d 661 (Family Court 1973); *Order of Railroad Telegraphers* v. *Railway Express Agency, supra; Chase Securities Corporation* v. *Donaldson, supra.*

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[3] A study based upon blood test results found that 39.6% of the accused men in disputed paternity cases were not actually the father of the children in question. Harry D. Krause, *Illegitimacy: Law and Social Policy,* p. 107, n. 9 (1971) citing Sussman, *Blood Group Tests — A Review of 1,000 Cases of Disputed Paternity,* 40 AM & J Clinical Pathology 38 (1963); Glazer, *Blood Grouping Tests in the Proof of Non-Paternity,* 33 Michigan State BJ No. 1, pp. 12, 17 (1954).

The balance which the legislation seeks to strike in paternity adjudications is consistent with the fact that paternity actions in Tennessee are viewed as civil in nature. *Frazier* v. *McFerren*, 55 Tenn. App. 431, 402 S.W.2d 467 (1964); *Wilkerson* v. *Benson*, 542 S.W.2d 811 (1976). Thus, no right to counsel is afforded a putative father defending a paternity action. Additionally, plaintiffs in paternity proceedings may prevail if paternity is established by a preponderance of the evidence. This standard of proof coupled with the lack of safeguards which are afforded for defendants in paternity actions compels the imposition of a statute of limitation which is sufficient to require the prosecution of claims of paternity before memories have faded, evidence has been lost, witnesses have disappeared or their testimony has become difficult to elicit. The two-year statute of limitations is substantially related to the State's interest when viewed in the context of paternity adjudications under Tennessee law.

Problems of proof in paternity actions are not alleviated by the fact that a defendant may avail himself of the benefits of HLA blood tests to disprove paternity. Under Tennessee law the results of HLA blood tests are admissible in evidence only when they definitely exclude the defendant as the father of the minor child. T.C.A. § 36-228 provides:

> The Court, on motion of the defendant, shall order the mother, her child and the defendant to submit to one or more blood grouping tests by a duly qualified physician to determine whether or not the defendant can be *excluded as being the father of the child, and the results of such tests may be received in evidence but only in cases where definite exclusion is established.*

The costs of said tests are likely to be born by the defendant. In that under Tennessee law only a father may request blood grouping tests and the results can only be used by the defendant when he is definitely excluded as a possible father, the costs of

said tests are likely to be born by the defendant.[4] Because of the expense which a defendant must assume in acquiring this evidence it is likely that a defendant may not avail himself of HLA tests.[5] Further, complexities involved in calculating the statistical likelihood that an accused man is the real father may confuse jurors charged with the responsibility of determining paternity, potentially resulting in erroneous decisions where the defendant is forced to rely solely upon blood test results to defend the action. *See Sanford N. Kate and Monroe L. Inker, Fathers, Husbands and Lovers: Legal Rights and Responsibilities - Joint AMA/ABA Guidelines: Present Statistics of Serologic Testimony in Problems in Problems of Disputed Parentage* (1979).

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[4] Notwithstanding this Court's ruling in *Little* v. *Streater*, 452 U.S. 1, 101 S.Ct. 2202 (1981), Tennessee Courts have not ruled that the costs of HLA tests may be taxed to the plaintiff or that the State is required to assume the costs of said tests if requested by an indigent defendant.

[5] An informal survey of nine laboratories conducted by Dr. Richard H. Walker, Chairman of the Committee on Parentage Testing of the American Association of Blood Banks in January 1979, produced the following information:

Survey of Charges for Paternity Testing

January 1979

	Red Cell Systems	Enzyme & Protein Systems	HLA	Total Charge for Trio
1. West Coast	9	15	No	$750.00
2. West Coast	9	None	Yes	$600.00
3. No. Central	9	3	Yes	$480.00
4. No. Central	6	10	Yes	$420.00
5. No. Central	5	None	Yes	$400.00
6. West Coast	1	0	Yes	$375.00
7. No. Central	7	1	Yes	$325.00
8. No. Central	8	6	No	$275.00
9. Midwest	6	0	Yes	$450.00

Further, as this Court recognized in *Mills*, notwithstanding the use of blood tests, the defendant may be required to rely upon more conventional forms of proof. As to these more conventional forms of proof, "the State clearly has an interest in litigating claims while the evidence is relatively fresh". *Mills*, 102 S.Ct. 1554, n. 4.

Most defendants against whom paternity actions are brought admit paternity.[6] Certainly, in cases in which allegations of paternity are vehemently denied, it cannot be said that the legislature could not rationally balance the harm to society in general and to a putative father in particular against the potential harm to a child born out of wedlock whose right to parental support may be waived by the mother's inaction. Under such circumstances the legislature may constitutionally impose a two-year limitation with appropriate exceptions for paternity actions.

Under Tennessee law, the support obligation of the father of a child born out of wedlock is ubiquitous. Accordingly, a father is liable for the necessary support of his minor child from his/her date of birth. By imposing a two-year statute of limitations upon actions to establish paternity and support, where the

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Excerpt from *Child Support in America: The Legal Prospective*, Harry D. Krause, Mitchie Company (1981), p. 450. Because of the exhorbitant costs of HLA tests it is not unlikely that defendants may not avail themselves of this probative evidence.

[6] Remarkably, the trial judge, Judge Kenneth Turner, Judge of the Juvenile Court of Memphis in Shelby County, Tennessee has explained: "Ninety-five percent of the suspected fathers admit paternity even before the case comes to trial." *U.S. News and World Report*, p. 50, February 12, 1979; Harry D. Krause, *Child Support in America*, Mitchie Company, Charlottesville, California (1981) p. 449. Thus, in Memphis, Shelby County, less than five percent of the plaintiffs bringing paternity actions would be subject to the statute of limitations.

father has not acknowledged or supported the child, the statute of limitations furthers the interest of the state in promoting justice.

Though it may be said that a longer period of time would serve the State's interests as well as the two-year statute of limitations, this fact alone does not make the Tennessee statute unconstitutional. As this Court has stated in *San Antonio* v. *Rodriguez:*

> Although other alternatives to the challenged statute could be proposed and effective . . . the least restrictive alternatives need not be chosen unless the State impinges on the exercise of fundamental constitutional rights or liberties. *San Antonio School District* v. *Rodriguez,* 411 U.S. 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) citing *Dunn* v. *Blumstein,* 405 U.S. at 343, 92 S.Ct. at 1003; *Shulton* v. *Tucker,* 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231 (1960); *San Antonio* v. *Rodriguez,* 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973).

And as Chief Justice Burger in *Vlandis* v. *Kline* so aptly stated:

> Literally thousands of state statutes created classifications permanent in duration which are less than perfect, as all legislative classifications are and might be improved upon by individualized determination. *Vlandis* v. *Kline,* 412 U.S. 441, 462, 93 S.Ct. 2230, 2241, 37 L.Ed.2d 63 (1973) see Chief Justice Burger (dissenting opinion).

Legislatures may validly pass laws based upon legislative classifications without violating the Equal Protection Clause of the Fourteenth Amendment. *Parham* v. *Hughes,* 441 U.S. 47, 99 S.Ct. 1742, 60 L.Ed.2d 269 (1979); *Dandridge* v. *Williams,* 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970); *McGowan* v. *State of Maryland,* 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961). Said legislation is deemed invalid, in most instances, unless it bears no rational relationship to permissible state objectives. *Parham* v. *Hughes, supra; Dandridge* v. *Williams, supra;* and *McGowan* v. *State of Maryland, supra.*

This Court has applied protections of strict judicial scrutiny to legislative classifications which discriminate against classes of individuals which are:

> saddled with such disabilities or subjected to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. *Matthews* v. *Lucas*, 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976).

See San Antonio School District v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973).

Under the strict scrutiny analysis the Court has required that the basis upon which said legislative clasifications lie be "scientifically substantiated" and subject to mathematical exactness. *Matthews* v. *Lucas, supra; Frontierio* v. *Richardson*, 411 U.S. at 677, 93 S.Ct. 1764, 36 L.Ed.2d 583 (1973). However, this Court has not treated legislative classifications based upon illegitimacy as being within the realm of classes requiring its most exacting scrutiny. *Labine* v. *Vincent*, 401 U.S. 532, 91 S.Ct. 1017, 28 L.Ed.2d 288 (1971); *Matthews* v. *Lucas, supra; Trimble* v. *Gordon*, 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed.2d 31 (1977). *See Jimenez* v. *Weinberger*, 417 U.S. 628, 94 S.Ct. 2496, 41 L.Ed.2d 363 (1974); *Weber* v. *Aetna Casualty & Surety Company*, 406 U.S. 164, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1972).

The level of scrutiny applicable to classifications based upon illegitimacy has been variously stated by this Court. The analysis has required, at a minimum, that the statutory classification bear some rational relationship to a legitimate state purpose. *Cf., Matthews* v. *Lucas, supra; Jimenez* v. *Weinberger, supra; Trimble* v. *Gordon, supra; Labine* v. *Vincent, supra; Webber* v. *Aetna Casualty & Surety Company, supra.* This Court's most recent analysis of classifications affecting the rights of illegitimates to parental support has required that restrictions imposed upon illegitimate children which are

greater than those imposed upon legitimate children be "substantially related" to a legitimate state interest to survive equal protection scrutiny. *Mills* v. *Hableutzel,* 456 U.S. ____, 102 S.Ct. 1549, 71 L.Ed.2d 770 (1982).

Clearly, Tennessee's two-year statute of limitations applicable to paternity adjudications, where the father has not acknowledged the child in writing or by providing support, and where a mother's minority and public support are not involved, is substantially related to the State's interests in avoiding the prosecution of stale and fraudulent claims. Thus, the two-year statute of limitations imposed upon such paternity actions does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Further, the statute of limitations affords persons wishing to assert claims a reasonable opportunity within which to bring said claims.

II. Tennessee's Legislative Classification Which Allows Actions To Be Brought In Behalf Of Any Child Under The Age Of Eighteen Who Is Or Is Liable To Become A Public Charge Is Rationally Related To The State's Interests In Protecting Public Revenue By Placing The Burden Of Support Of Minor Children Upon Those Who Are Responsible For The Birth.

Appellant asserts that the public charge exception to the limitation period discriminates against an unacknowledged illegitimate who is not a public charge. It is asserted that this provision discriminates unconstitutionally between welfare and non-welfare cases and is therefore "wealth based" discrimination in violation of the Fourteenth Amendment to the United States Constitution. Appellee respectfully submits that appellant has no standing to challenge the constitutionality of this provision. As appellant states in his brief, p. 5, Jeffrey Lee Pickett was not a public charge and the defendant, Braxton Brown, had never acknowledged the minor child nor provided support. Accordingly, the Tennessee Supreme Court expressly

stated in that the constitutionality of the eighteen-year exception to the limitation period was not decided. *Pickett* v. *Brown*, JA, p. 39, n. 6.

The public charge exception challenged by appellant allegedly discriminates among illegitimate children based upon "wealth" or "social standing". In *San Antonio School District* v. *Rodriguez, supra,* this Court held that issues regarding a state system of school financing were subject to the constitutional standard which requires that state action rationally further legitimate state purposes. *San Antonio School District* v. *Rodriguez, supra,* 93 S.Ct. p. 1308. As the Court recognized in *Rodriguez,* wealth-based legislative classifications do not invoke a more stringent standard than mere rationality.

Further, "the existence of some inequality" in the manner in which the state's rationality is achieved does not alone make the legislative action unconstitutional". *San Antonio School District* v. *Rodriguez, supra,* 93 S.Ct. at 1306, citing *McGowan* v. *Maryland,* 366 U.S. 420, 425-426, 81 S.Ct. 1101, 1104-1105, 6 L.Ed.2d 393 (1961). *See Parham* v. *Hughes,* 441 U.S. 347, 99 S.Ct. 1742, 60 L.Ed.2d 269 (1979).

The fact that under Tennessee law illegitimates who receive welfare are treated differently from those who do not, does not render the statute unconstitutional. As this Court has stated:

> ". . . the Fourteenth Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective." *McGowan* v. *Maryland,* 366 U.S. 420 at 425, 81 S.Ct. 1101, at 1105, 6 L.Ed.2d 393 (1961).

Clearly, the State's objective in enacting its paternity statute was not to treat all paternity claims equally. The Tennessee paternity statute provides exceptions to the two-year limitation

where the putative father has previously acknowledged the child in writing and where the father has furnished support. The objective was to provide a reasonable scheme for assuring that illegitimate children are supported and that the public does not have to bear the burden of supporting minor children when the child's mother or putative father is capable of doing so. *See Mores* v. *Feel,* 73 Misc.2d 942, 343 N.Y.S.2d 220 (Family Court New York Co. 1973). In *Dandridge* v. *Williams* this Court stated:

> In the area of economics and social welfare, a state does not violate the equal protection clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis", it does not offend the constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality". *Lindsley* v. *Natural Carbonic Gas Company,* 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369. "The problems of government are practical ones and may justify, if they do not require, rough accommodations - illogical, it may be, and unscientific." *Metropolis Theatre Company* v. *City of Chicago,* 228 U.S. 61, 69-70, 33 S.Ct. 441, 443, 57 L.Ed. 730. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland,* 366 U.S. 420, 426, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393. *Dandridge* v. *Williams,* 90 S.Ct. 1153, 1161, 397 U.S. 471, 485 (1970).

Appellee submits that the public charge exception is a constitutionally valid exercise of legislative authority which is rationally related to the State's interests in protecting its public revenue. Protection of the public interests is in the forefront of legitimate interests in the enactment of paternity statutes. *See Kuser* v. *Orkis,* 169 Conn. 66, 362 A.2d 943 (1975); *Vigil* v. *Tofoya,* 60 P.2d 721 (Wy. 1979); *Commissioner of Welfare of City of New York* v. *Jones,* 73 Misc.2d 1014, 343 N.Y.S.2d 661

(Family Court 1973). It is a recognized fact that original laws imposing support of the child on a parent were enacted solely to protect the community from the burden of supporting minor children. *See Sanford N. Kate and Marvin L. Inker, Fathers, Husbands and Lovers: Legal Rights and Responsibilities - Impact of Roe* v. *Wade on Parental Support Statutes: A Constitutional Analysis* (1979). Further, "it is the concern over added public burdens rather than a social conscious which has made it possible in a number of states for the state's attorney . . . to bring an action against the man who is accused of being the father of the child". Francis W.H. Kuchler, *Law of Support*, p. 38, 3d Ed. (1980). This purpose is likewise reflected in national policy as expressed by Amendments to Title IVD of the Social Security Act relative to recipients of public aid.[7] 42 U.S.C.A. § 654. *See* Kuchler, *Law of Support, supra,* pp. 31 & 32.

Legislation which treats government litigants differently from private litigants is firmly grounded upon principles of public policy. This policy is expressed most clearly in the state's exemption from limitations which apply to actions between the government and private litigants. *See* T.C.A. § 28-1-113, Appendix (i.); *Anderson* v. *Security Mills,* 175 Tenn. 197, 133 S.W.2d 478 (1939). This policy is also evidence in Tennessee statutory and consitutional provisions prohibiting actions against the State. *See* T.C.A. § 20-13-102; Tenn. Const. Art. I, § 17, Appendix (i). These provisions are based upon the public policy of preserving and protecting revenues meant to be expended for the benefit of the public. *See Guaranty Trust Company* v. *United States,* 304 U.S. 126, 132, 58 S.Ct. 785, 82 L.Ed. 1221 (1938).

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[7] Pursuant to 42 U.S.C.A. § 602(a) state welfare agencies are required to establish a single identified unit, whose purpose is to undertake to establish paternity of each child receiving welfare who was born out of wedlock and to secure support for him or her.

Under T.C.A. § 36-224(2) the Department of Human Services or any person is empowered to bring an action on behalf of any child under the age of eighteen who is or is liable to become a public charge.[1] This provision is clearly based upon the public policy of preserving and protecting public revenues. A minor child may not require public assistance until after age two. In such instances, the State's interests requires that the duty of paternal support be established. Thus, the legislature could rationally conclude that the State's interests in protecting its purse necessitates a longer period within which the State may bring an action to establish paternity and the obligation of support.

In paternity cases, the State has a strong interest in protecting the public treasury and in assuring that at least one person will be financially responsible for a child. This interest does not exist when the child is not a public charge and is adequately supported by its mother or some other person. However, when the child requires public assistance, the State acquires a strong interest in identifying the father. *See Pickett* v. *Brown*, JA, p. 39; *Mores* v. *Feel*, 73 Misc.2d 942, 343 N.Y.S.2d 220 (Fam. Ct. N.Y. Co. 1973).

The public charge exception reflects a balance between the risk of using stale evidence and the need to adjudicate paternity of children who rely upon the State for their support. The strong public interest in protecting the State treasury, when added to the interests of the mother and the child, tilts the balance in favor of a longer period to establish paternity for persons who rely upon the State for their welfare. Thus, this provision reflects a rational determination by the legislature which furthers the State's legitimate interest in protecting the public treasury from unnecessary financial burdens.

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[1] Appellant asserts that the provision of this statute which refers to "any child who is liable to become a public charge" applies to unborn children. Appellant cites no authority for this contention. It is the position of appellee that this provision applies to any minor child born or unborn. *See Young* v. *Willis*, 436 S.W.2d 445 (1968).

III. Tennessee's Paternity Statute Which Affords The Mother Or One Acting In Her Stead The Right To Bring An Action To Establish Paternity Or The Obligation Of Support Within Two Years Following The Birth Of The Child, Where There Has Been No Acknowledgement Of Paternity, Does Not Violate Principles Of Due Process.

A. The legislative determination conferring the right to establish paternity upon the mother or one acting in place of the mother does not constitute a violation of due process.

State statutes are not violative of due process under general principles of substantive due process, unless they are found to be unreasonable, arbitrary or capricious. *See* 16A Am.Jur.2d *Constitutional Law,* ¶ 816. The legislative determination authorizing a mother, or one acting in place of the mother, to bring an action to establish paternity cannot be said to be unreasonable. This Court has acknowledged that a state could enact a limitation period on actions to establish support which is shorter than the child's minority. *See Mills* v. *Hableutzel,* 102 S.Ct. 1554. Generally speaking, actions brought on behalf of a child during his minority will be brought by the mother. *Id.* The legislature could reasonably and rationally conclude that the decision whether to institute a paternity action is in the child's best interests rests with the mother. *See Thompson* v. *Thompson,* 404 A.2d 269 (1979). Further, appellee submits that to allow a minor child the right to establish paternity notwithstanding a parental decision not to do so may constitute a violation of the mother's right to freedom of personal choice in matters of family life and pose an unwarranted governmental intrusion into a private realm of family life. *See Parham* v. *J.R.,* 442 U.S. 584, 602, 610, 99 S.Ct. 2493, 2504, 2508, 61 L.Ed.2d 101 (1979); *Cleveland Board of Education* v. *LaFleur,* 414 U.S. 632, 639-640, 94 S.Ct. 791, 796, 39 L.Ed.2d 52 (1974); *Prince* v. *Massachusetts,* 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944).

The Tennessee legislature has determined that actions to establish paternity must be brought by the mother or one standing in her stead. The reasonableness of the decision is supported by this nation's "strong tradition of parental concern for the nuture and upbringing of their children. This primary role of the parent in the upbringing of their children is now established beyond debate as an enduring American tradition . . ." *Wisconsin* v. *Yoder,* 92 S.Ct. 1526, 1541, 1542, 406 U.S. 205, 232, 32 L.Ed.2d 15 (1972).

The failure of the legislature to authorize a cause of action for minor children to esablish paternity or support under T.C.A. § 36-224 cannot be said to be violative of principles of due process. It is reasonable to assume that the mother can protect her child's interest in establishing support. Further, pursuant to T.C.A. § 36-224(1) an action to establish paternity and the obligation of support may be brought on behalf of a minor child through a guardian or next of friend in the event of the death or disability of the mother. Thus, in instances where the mother suffers from a disability by virtue of her minority, a minor child may assert his right to establish paternity through a person who is legally competent to do so. Accordingly, Tennessee's paternity statute provides illegitimates reasonable procedures through which the obligation of support may be established.

Appellant has relied upon language cited from the case of *Rose Funeral Home, Inc.* v. *Julian,* 176 Tenn. 534, 144 S.W.2d 755 (1940) to support his contention that a child has a cause of action for support. In *Rose Funeral Home,* an undertaker brought an action against the father of a deceased child for funeral expenses incident to the burial of the child. The mother and father were divorced prior to the death of the child. The mother of the child had instructed the plaintiff funeral home that she would be responsible for the funeral expenses incident to the child's death. Notwithstanding, the plaintiff instituted an action for the funeral bill against the father. The Tennessee Supreme Court held that the mother's agreement to perform her

statutory duty did not discharge the father's statutory obligation. In reaching its decision, the Tennessee Supreme Court stated:

> Where the divorce decree awarding the custody of the child to the mother provides that the father shall contribute to its maintenance, it is logically held that such a decree relates merely to the relative rights and duties of the parents toward each other. Since the child is not a party to such suit, the child's rights as against the father are not affected. (citation omitted).

The import of the above quote was not to confer upon the child a cause of action against the father. Indeed such would have been impossible in that the child was dead at the time of the cause of action. Accordingly, any rights which the child may have had were not the subject of that cause of action. Thus, appellant's reliance upon *Rose Funeral Home* to support his contention that a child has a cause of action for support, is misplaced.

The Supreme Court in *Pickett* v. *Brown* accurately stated the law in Tennessee relative to the rights of illegitimate children to bring an action to establish paternity and support. T.C.A. § 36-224(1) does not permit an action to be brought by the child except in case of death or disability of the mother, and then the action must be brought through an appropriate representative.

B. The two-year statute of limitations represents a reasonable balance between the conflicting interests of the mother and child, the putative father's right to have the claim of paternity timely litigated and the public's interest in the prompt adjudication of paternity claims.

Statutes of limitations are subject to constitutional attack for lack of due process only when the legislative determination in weighing conflicting interests is arbitrary or capricious. Thus, the test of due process in evaluating a statute of limitations is a test of reasonableness. *Hargraves* v. *Brackett Stripping Machine Company,* 317 F.Supp. 676 (D.C. E.D. Tenn. 1970). As

discussed in Part I of appellee's brief, in enacting limitation periods the legislature must weigh conflicting interests between one person's right to enforce an otherwise valid claim; another person's right to be confronted with any claim before time has likely rendered unavailable or difficult matters; and the public's interest in prompt adjudication of paternity claims.

The reasonableness of the two-year limitation period has been discussed in Part I of appellee's brief. The legislative requirement that a paternity action be brought within two years following the birth of the child in cases where problems of proof are likely to arise cannot be said to be so arbitrary or capricious as to be violative of the due process clause. *See Hargraves* v. *Brackett Stripping Machine Company, supra,* at p. 683. *See* Appellee's Brief, Part I, pp. 4-12.

C. **Principles of procedural due process are inapplicable to plaintiff's claim.**

Plaintiff is not denied a property interests by the imposition of a statute of limitations. The legislature has defined the parameters of appellant's cause of action and attached thereto a two-year limitation period. If as appellee has argued the two-year statute of limitations is reasonable, the legislative determination provides appellant with all the process that is due. *See Logan* v. *Zimmermann Brush Company,* 102 S.Ct. 1148 at 1157 (1982).

Appellant's assertion that failure to afford her actual notice of the two-year limitation deprives her of due process cannot be viewed as a serious argument. All persons are charged with knowledge of the law. The impracticality of requiring the State to furnish actual notice of the two-year statute of limitations in paternity actions to a mother or one standing in her stead and to provide notice of the consequences of failure to establish the claim becomes obvious when taken to its logical extension. Further, the cost of providing such notice is clearly a fact which must be considered. As the Court noted in *Parham* v. *J.R.:*

> It should be realized the procedural requirements entail the expenditure of limited resources, that at some point the benefit to individuals from an additional safeguard is substantially outweighed by the costs of providing such protection, and that the expense of protecting those likely to be found undeserving will probably come out of the pockets of the deserving. Quoting from Friendly, "Some Kind of Hearing" 123 Univ. Pa. L. Rev. 1267, 1276 (1975) *Parham* v. *J.R.*, 99 S.Ct. 2493, 442 U.S. 584, 61 L.Ed.2d 101 (1979) n. 14.

Further, appellant's suggestion that persons bringing actions on behalf of minor children born out of wedlock be provided with counsel is not supported by judicial precedent. To the contrary, this Court has stated that the right to counsel is not a constitutional requirement which deprives a parent of due process. *Lassiter* v. *Department of Social Services of Durham City,* 101 S.Ct. 2153 (1981).

CONCLUSION

For the reasons stated herein, appellee respectfully submits that Tennessee's two-year statute of limitations in certain paternity actions is substantially related to legitimate state interests and affords persons with legitimate claims a reasonable opportunity to assert them. Thus, Tennessee's paternity statute is entitled to a presumption of validity. Further, T.C.A. § 36-224 represents a reasonable exercise of legislative authority which is rationally related to legitimate state interests. Accordingly, T.C.A. § 36-224 is not violative of the Equal Protection or Due Process Clauses of the Fourteenth Amendment and the validity of the statute should be upheld. The decision of the Tennessee Supreme Court in *Pickett* v. *Brown* should be affirmed and appellant's appeal dismissed.

Respectfully submitted,

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APPENDIX

Article 1, Section 17, Constitution of Tennessee

Sec. 17. Open courts - Redress of injuries - Suits against the State. - That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.

Tennessee Code Annotated, section 20-13-102

Actions against state prohibited. — (a) No court in the state shall have any power, jurisdiction, or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea, or demurrer of the law officer of the state, or counsel employed for the state.

(b) No statutory or other provision authorizing the University of Tennessee and its board of trustees to sue and be sued shall constitute a waiver of sovereign immunity.

Tennessee Code Annotated, section 28-1-106

Persons under disability on accrual of right. — If the person entitled to commence an action is, at the time the cause of action accrued, either within the age of eighteen (18) years, or of unsound mind, such person, or his representatives and privies, as the case may be, may commence the action, after the removal of such disability, within the time of limitation for the particular cause of action, unless it exceed three (3) years, and in that case within three (3) years from the removal of such disability.

Tennessee Code Annotated, section 28-1-113

Actions by state. — The provisions of this title do not apply to actions brought by the state of Tennessee, unless otherwise expressly provided.

Tennessee Code Annotated, section 34-101

Fathers and mothers joint and equal natural guardians of minor children — Equally charged with support and other duties. — Fathers and mothers are joint natural guardians of their minor children, and they are equally and jointly charged with their care, nurture, welfare, education, and support, and also with the care, management and expenditures of their estates. Fathers and mothers have equal powers, rights, and duties with respect to the custody of their minor child or children, and the control and the services and earnings of such minor child or children; provided, that so much as may be necessary of the net income of such minor child may be expended in his care, maintenance and education.

Tennessee Code Annotated, section 36-228

Blood tests to determine paternity. — The court, on motion of the defendant, shall order the mother, her child and the defendant to submit to one or more blood grouping tests by a duly qualified physician to determine whether or not the defendant can be excluded as being the father of the child, and the results of such tests may be received in evidence but only in cases where definite exclusion is established.